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FEDERAL COMMUNICATIONS COMMISSION  
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April 11, 1997

William F. Caton, Acting Secretary  
Federal Communications Commission  
Washington, DC 20554

Re: WT Docket No. 96-18  
PP Docket No. 93-253

Dear Mr. Caton:

Transmitted herewith on behalf of TSR Paging Inc. are an original and eleven (11) copies of a "Petition For Reconsideration" with respect to the Second Report and Order and Further Notice of Proposed Rulemaking, FCC 97-59 (released February 24, 1997) in the above-captioned proceeding.

Should any questions arise with respect to this matter, please communicate directly with undersigned counsel.

Respectfully submitted,

*Richard Becker*  
Richard S. Becker  
Attorney for TSR Paging Inc.

Enclosures

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Before the  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Revision of Part 22 and ) WT Docket No. 96-18  
Part 90 of the Commission's )  
Rules to Facilitate Future )  
Development of Paging Systems )  
 )  
Implementation of Section ) PP Docket No. 93-253  
309(j) of the Communications )  
Act -- Competitive Bidding )

To: The Commission

**PETITION FOR RECONSIDERATION**

TSR Paging Inc. ("TPI"), by its attorneys and pursuant to 47 C.F.R. §1.429, hereby submits this Petition For Reconsideration ("Petition") of the Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 96-18, PP Docket No. 93-253, FCC 97-59 (released February 24, 1997) ("Second R&O") in the above-captioned proceeding. In support of this Petition, the following is respectfully shown.

1. In its Notice Of Proposed Rulemaking<sup>1</sup> in the above-captioned proceeding, the Commission proposed extensive revisions to its regulation of common carrier paging ("CCP") services pursuant to Part 22 of the Commission's Rules and private paging ("PCP") services pursuant to Part 90 of the Commission's Rules, including a proposal to modify the method by which the Commission licenses existing shared PCP channels. Specifically, the Commission sought comments as to: (i) whether existing shared PCP channels should be designated for exclusive use and assigned

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<sup>1</sup>Notice Of Proposed Rulemaking, 11 FCC Rcd 3108 (1996) (hereinafter "NPRM").

through competitive bidding procedures; (ii) whether the use of existing shared PCP channels should be capped at a specified number of licensees, with mutually-exclusive applications for additional facilities resolved through competitive bidding; or (iii) whether the current licensing scheme should be retained.<sup>2</sup>

2. In the Second R&O, the Commission decided to retain the status quo with respect to the licensing of existing shared PCP channels, concluding that none of the above-referenced options would help to maximize the efficient use of paging spectrum.<sup>3</sup> Notwithstanding this decision, the Commission requested further comment as to how the licensing application and frequency coordination procedures for shared PCP channels could be modified to ensure that such channels are not burdened by excessive speculation and fraud.<sup>4</sup>

3. As demonstrated herein by TPI,<sup>5</sup> the Commission's refusal to modify the licensing procedures for existing shared PCP channels

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<sup>2</sup>NPRM, 11 FCC Rcd at 3115.

<sup>3</sup>Second R&O, ¶¶40-43.

<sup>4</sup>Id. at ¶43.

<sup>5</sup>TPI is a communications company primarily engaged in the provision of one-way paging services. TPI currently provides wide-area, one-way paging service in numerous states, including New York, Connecticut, Rhode Island, Massachusetts, Maine, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, the District of Columbia, Texas, Wisconsin, Illinois, Indiana, New Mexico, Arizona, Nevada and California. TPI provides one-way paging service on both CCP Channels and 929 MHz PCP Channels. In point of fact, TPI is now licensed to operate on the shared paging frequency 929.0875 MHz throughout southern California. See e.g., Station KNNM 822 (File No. 9601D018710). This system will be referred to herein as the "TPI 929.0875 MHz Southern California System".

as proposed in the Second R&O is contrary to the public interest. As such, the Commission must reconsider and reverse that portion of the Second R&O which refused to cap the number of existing licensees on the five (5) shared frequencies in the 929 MHz band, namely, 929.0375 MHz, 929.0625 MHz, 929.0875 MHz, 929.1625 MHz and 929.2625 MHz,<sup>6</sup> while also refusing to subject additional mutually-exclusive applications to the competitive bidding process.

4. The Commission has held that when continued licensing on 900 MHz frequencies on a shared basis discourages the optimal efficient use of such frequencies, such frequencies should be converted for operation on an exclusive basis.<sup>7</sup> The Commission's decision in the Second R&O to continue to license all existing shared PCP frequencies on a shared basis while simultaneously subjecting new entry on all other paging channels to the competitive bidding process threatens to substantially disrupt the efficient usage of the 929 MHz Shared Frequencies by the incumbents on these frequencies.

5. Specifically, as the Commission acknowledged in the Second R&O, many incumbents on the 929 MHz Shared Frequencies have already expended considerable time and expense to develop and implement effective time-sharing arrangements in order to maximize

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<sup>6</sup>These five (5) frequencies, currently allocated for one-way paging operations on a shared basis pursuant to 47 C.F.R. §90.494(b), will be referred to herein collectively as the "929 MHz Shared Frequencies".

<sup>7</sup>See Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, PR Docket No. 93-35 (RM-7986), 8 FCC Rcd 8318, 8319-8320 (1993) (hereinafter "Channel Exclusivity Report and Order").

the usage of these channels.<sup>8</sup> Such time-sharing arrangements often involve complex procedures which go well beyond the minimum monitor before transmit requirements imposed by the Commission's Rules.<sup>9</sup> These time-sharing arrangements have proved to successfully ensure high-quality paging services to thousands of subscribers on a wide-area basis. Despite such progress, the Commission's decision in the Second R&O now invites the entire paging community to wreak havoc upon this relative tranquility because the 929 MHz Shared Frequencies will become one of the few sources of one-way paging operations for those entities: (i) who are unable or unwilling to participate in the competitive bidding process; or (ii) who fail to obtain geographic licenses. Simply put, by deciding to continue to license the 929 MHz Shared Frequencies on a shared basis, the Commission will likely be inundated by applications for these scarce channels by speculators as well as legitimate licensees.<sup>10</sup>

6. Although the Commission is attempting to deal with the anticipated flood of applications by seeking further comment on how

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<sup>8</sup>In point of fact, TPI has entered into such a time-sharing arrangement with respect to the TPI 929.0875 MHz Southern California System.

<sup>9</sup>See 47 C.F.R. §90.403(e).

<sup>10</sup>In this regard, by modifying its interim licensing Rules for incumbent paging operators so as to allow incumbents to file applications to expand their systems anywhere in the country rather than just within forty (40) miles of an authorized and operating transmission site, Second R&O at ¶43, the threat posed by this anticipated flood of applications is likely to come from not only licensees in adjacent areas, but rather from all co-channel licensees nationwide.

to further modify its licensing Rules to prevent speculation,<sup>11</sup> TPI respectfully submits that this approach represents too little too late and that the sheer demand for non-geographic area based one-way paging systems will likely overburden the precious spectrum currently represented by the 929 MHz Shared Frequencies. Accordingly, TPI respectfully requests that the Commission reconsider its decision in the Second R&O with respect to shared PCP frequencies and adopt the following licensing scheme:

- Except as authorized pursuant to the competitive bidding process, usage on the 929 MHz Shared Frequencies would be capped at the number of licensees existing as of the adoption date of the Second R&O, February 19, 1997. The licensees existing as of the adoption date of the Second R&O will be referred to hereinafter as the "Incumbents".
- Absent an agreement with the geographic licensee to the contrary, Incumbents would be permitted to add or modify their existing paging systems so long as they do not expand their existing interference contours.<sup>12</sup>

TPI respectfully submits that this approach will ensure that existing licensees on the 929 MHz Shared Frequencies will be able to continue to build out their existing paging systems in accordance with a predictable regulatory regime, a primary goal of the Commission in assessing the need for the allocation of exclusive frequencies.<sup>13</sup>

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<sup>11</sup>Second R&O at ¶43.

<sup>12</sup>See Second R&O at ¶¶57-58.

<sup>13</sup>In its 1993 Channel Exclusivity Report and Order, the Commission confirmed that channel exclusivity is designed to create "a more stable, predictable environment that should encourage investment in wide-area, high-capacity paging systems in the 929-930 MHz band." Channel Exclusivity Report and Order, 8 FCC Rcd at 8320. It should be noted that, under TPI's proposal, the lower band shared paging channels would be able to absorb any additional

7. In addition, TPI respectfully submits that the Commission's competitive bidding processes should be utilized to permit limited additional time-sharing opportunities on the 929 MHz Shared Frequencies to auction winners. Specifically, rather than requiring a geographic licensee to protect co-channel incumbents from interference and thereby limit the coverage area of the geographic licensee to only unserved areas,<sup>14</sup> TPI submits that any licensee prevailing in the competitive bidding process (whether such entity is an incumbent or a new entry to the market) should be rewarded with the right to time-share on its particular frequency throughout the entire geographic area for which it applied. Once geographic licenses are awarded and additional time-sharing arrangements are implemented by the co-channel licensees, no further licensing would be permitted on the 929 MHz Shared Frequencies. Such a result would ensure stability on these heavily used frequencies and would promote the efficient build-out of wide-area paging systems, in accordance with Commission policy.<sup>15</sup> In addition, adoption of TPI's plan would ensure the value of the geographic licenses for the 929 MHz Shared Frequencies.

8. TPI has demonstrated that the Commission must reconsider and reverse that portion of the Second R&O which refused to cap the number of existing licensees on the 929 MHz Shared Frequencies and

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applications from new entrants.

<sup>14</sup>See Second R&O at ¶69.

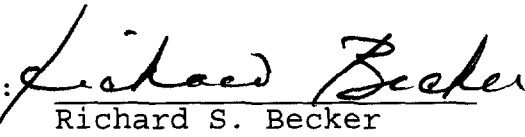
<sup>15</sup>Channel Exclusivity Report and Order, 8 FCC Rcd at 8320, 8330.

to subject additional mutually-exclusive applications to the competitive bidding process.<sup>16</sup> Adoption of the licensing plan described by TPI herein would serve the public interest by preventing these frequencies from being completely overrun by paging speculators.

**WHEREFORE**, TPI respectfully requests that the Commission reconsider the Second R&O as specified in this Petition.

Respectfully submitted,

**TSR PAGING INC.**

By:   
Richard S. Becker  
James S. Finerfrock  
Jeffrey E. Rummel

Its Attorneys

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1915 Eye Street, NW; Eighth Floor  
Washington, DC 20006  
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Date: April 11, 1997

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<sup>16</sup>It should be emphasized that the instant Petition relates only to the 929 MHz Shared Frequencies and not to the lower band shared paging frequencies below 929 MHz which were apparently the focus of the Commission in its Second R&O. These lower band shared channels are more heavily licensed than the 929 MHz Shared Frequencies, particularly in metropolitan areas, and as a result it would be more difficult to impose TPI's proposed licensing scheme on licensees of facilities operating in these lower band frequencies.



**CERTIFICATE OF SERVICE**

I, Emily Luther, a secretary in the law firm of Richard S. Becker & Associates, Chartered, hereby certify that I have on this 11th day of April, 1997, caused copies of the foregoing "**PETITION FOR RECONSIDERATION**" to be hand-delivered to the following:


Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, N.W.; Eighth Floor  
Washington, DC 20554

Commissioner James H. Quello  
Federal Communications Commission  
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Commissioner Rachelle B. Chong  
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Emily Luther